

ASSEMBLY BILL

No. 238

Introduced by Assembly Member Harman

February 7, 2005

An act to amend Section 3440.1 of the Civil Code, relating to fraudulent transfers.

LEGISLATIVE COUNSEL'S DIGEST

AB 238, as introduced, Harman. Fraudulent transfers: personal property.

Existing law provides generally that a transfer of personal property not accompanied by delivery and change of possession of the property is void against the transferor's creditors, except for certain specified transfers or types of property.

This bill would additionally exempt the transfer of property by any governmental entity.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 3440.1 of the Civil Code is amended to
- 2 read:
- 3 3440.1. This chapter does not apply to any of the following:
- 4 (a) Things in action.
- 5 (b) Ships or cargoes if either are at sea or in a foreign port.
- 6 (c) The sale of accounts, chattel paper, payment intangibles, or
- 7 promissory notes governed by the Uniform Commercial Code,
- 8 security interests, and contracts of bottomry or respondentia.

(d) Wines or brandies in the wineries, distilleries, or wine cellars of the makers or owners of the wines or brandies, or other persons having possession, care, and control of the wines or brandies, and the pipes, casks, and tanks in which the wines or brandies are contained, if the transfers are made in writing and executed and acknowledged, and if the transfers are recorded in the book of official records in the office of the county recorder of the county in which the wines, brandies, pipes, casks, and tanks are situated.

(e) A transfer or assignment made for the benefit of creditors generally or by any assignee acting under an assignment for the benefit of creditors generally.

(f) Property exempt from enforcement of a money judgment.

(g) Standing timber.

(h) Subject to the limitations in Section 3440.3, a transfer of personal property if all of the following conditions are satisfied:

(1) Prior to the date of the intended transfer, the transferor or the transferee files a financing statement, with respect to the property transferred, signed by the transferor. The financing statement shall be filed in the office of the Secretary of State in accordance with Chapter 5 (commencing with Section 9501) of Division 9 of the Commercial Code, but may use the terms “transferor” in lieu of “debtor” and “transferee” in lieu of “secured party.” The provisions of Chapter 5 (commencing with Section 9501) of Division 9 of the Commercial Code shall apply as appropriate to the financing statement.

(2) The transferor or the transferee publishes a notice of the intended transfer one time in a newspaper of general circulation published in the judicial district in which the personal property is located, if there is one, and if there is none in the judicial district, then in a newspaper of general circulation in the county embracing the judicial district. The publication shall be completed not less than 10 days before the date the transfer occurs. The notice shall contain the name and address of the transferor and transferee and a general statement of the character of the personal property intended to be transferred, and shall indicate the place where the personal property is located and a date on or after which the transfer is to be made.

1 (i) Personal property not located within this state at the time of
2 the transfer or attachment of the lien if the provisions of this
3 subdivision are not used for the purpose of evading this chapter.

4 (j) A transfer of property ~~which~~ *that* (1) is subject to a statute
5 or treaty of the United States or a statute of this state that
6 provides for the registration of transfers of title or issuance of
7 certificates of title and (2) is so far perfected under that statute or
8 treaty that a bona fide purchaser cannot acquire an interest in the
9 property transferred that is superior to the interest of the
10 transferee.

11 (k) A transfer of personal property in connection with a
12 transaction in which the property is immediately thereafter leased
13 by the transferor from the transferee provided the transferee
14 purchased the property for value and in good faith (subdivision
15 (c) of Section 10308 of the Commercial Code).

16 (l) Transition property, as defined in Section 840 of the Public
17 Utilities Code, or recovery property, as defined in Section 848 of
18 the Public Utilities Code.

19 (m) *A transfer of property by any governmental entity.*